

Arent Fox

December 14, 2009

VIA ECFS

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Stephanie A. Joyce

Attorney
202.857.6081 DIRECT
202.857.6395 FAX
joyce.stephanie@arentfox.com

Re: WC Docket No. 09-144, *Securus Petition for
Declaratory Ruling*

Dear Ms. Dortch:

By this letter, Securus Technologies, Inc. (“Securus”), on behalf of itself and its operating companies Evercom Systems, Inc. and T-Netix Telecommunications Services, Inc., responds to the ex parte letters filed by Millicorp/ConsCallHome in the above-named docket on December 9, 10, and 11, 2009. *E.g.*, Letter from William P. Cox to Marlene H. Dortch (Dec. 11, 2009) (notice of ex parte meeting with Austin Schlick, General Counsel, and others) (“Letter”). Several misrepresentations of fact appear in the letters, nearly all of which Securus addressed and refuted in its Reply Comments filed September 10, 2009 (“Securus Reply”) or in the Petition for Declaratory Ruling filed July 24, 2009 (“Securus Petition”). Because the misrepresentations persist, however, Securus again will address and refute each of them.

1. Millicorp/ConsCallHome Is Not a “Legitimate” Telephone Service Provider.

Millicorp/ConsCallHome purports that it is a “legitimate, FCC-regulated and compliant” carrier. Letter at 1. Yet it was not registered with the FCC, and thus had no Federal Registration Number (“FRN”), until July 9, 2009. Securus Reply at 5. Because it was not registered, it is impossible that Millicorp/ConsCallHome could have made the required quarterly contributions to the Universal Service Fund as required by 47 C.F.R. § 54.706(a)(18). *Id.* at 6. Form 499-A requires a FRN to complete and submit quarterly reports. As such, Millicorp/ConsCallHome cannot have been “compliant” with its USF obligations.

In its comments on the Securus Petition for Declaratory Ruling, Millicorp/ConsCallHome states that its service was operational in “early 2008.” Affidavit of Timothy Meade ¶ 3 (Aug. 27, 2009) (appended to Comments). If that assertion is true, Millicorp/ConsCallHome was not “compliant” with FCC regulations for 18 months or more. Moreover, it is dubious that ConsCallHome ever would have attempted to comply with FCC regulations if Securus had never discovered these call diversion schemes.

Arent Fox

Aside from its failure to comply with USF and registration requirements, Millicorp/ConsCallHome is not a “legitimate” provider of inmate telecommunications service. This entity has never participated in a public bid to be the contractor for inmate telecommunications service as legitimate providers, such as Securus and Global Tel*Link Corporation, must do. Securus Petition at 15. This entity has never contacted any of the thousands correctional authorities with whom Securus works in order to offer or explain its “services.” Nor did Millicorp/ConsCallHome contact Securus during the several months in which it surreptitiously was diverting inmate calls without detection.¹ Legitimate providers of inmate telecommunications services do not and cannot behave in this manner.

Finally, regardless of how Millicorp/ConsCallHome attempts to portray itself and its services, federal law does not permit inmates or their called parties to dial around the secure calling platform in place at correctional facilities or to choose an alternative long-distance provider. *Amendment of Policies and Rules Concerning Operator Service Providers and Call Aggregators*, CC Docket No. 94-158, Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 4532, 4547 ¶ 29 (1996) (“1996 TOCSIA Order”); *Policies and Rules Concerning Operator Service Providers*, CC Docket No. 90-313, Report and Order, FCC 91-116, 6 FCC Rcd. 2744, 2752 ¶ 15 (1991) (“1991 TOCSIA Order”); *Billed Party Preference for InterLATA 0+ Calls*, CC Docket No. 92-77, Second Report and Order and Order on Reconsideration, FCC 98-9, 13 FCC Rcd. 6122, 6156 ¶ 57 (1998) (“Billed Party Preference Order”). Call diversion schemes are simply a new form of “dial around” service, but they are far more dangerous in that the providers operate *sub rasa*, including Millicorp/ConsCallHome until July 9 of this year. See Securus Petition at 16-17; Securus Reply at 13. Millicorp/ConsCallHome and the other call diversion schemes have simply inserted themselves into the inmate telecommunications market unannounced, they hold no contracts, and to this day Securus does not know which scheme operates where. Securus Reply at 12 n.11. Because even 1-800-COLLECT, which is operated by AT&T, cannot operate from inmate phones under the above-cited Commission orders, there is no reason that Millicorp/ConsCallHome should be permitted to do so.

2. Millicorp/ConsCallHome Is Not an “Interconnected VoIP Provider.”

Millicorp/ConsCallHome also purports that it is an “interconnected voice over Internet protocol (“VoIP”) provider.” Letter at 1. It attempts to demonstrate that it satisfies all of the criteria of the Commission’s definition of “interconnected VoIP service.” *Id.* at 1 n.1. Yet the letter ignores a key phrase from the fourth criterion. This omission was necessary and likely deliberate, for Millicorp/ConsCallHome cannot satisfy the actual criterion which Securus already

¹ Securus discovered ConsCallHome in April 2009. Securus Petition, Declaration of Robert Pickens ¶ 12 (July 24, 2009).

Arent Fox

proved in its Reply Comments. In addition, Millicorp/ConsCallHome concedes, as it must, that it cannot satisfy the second or third criterion.

According to Rule 9.3,

An interconnected Voice over Internet protocol (VoIP) service is a service that

- (1) Enables real-time, two-way voice communications;
- (2) **Requires a broadband connection from the user's location;**
- (3) **Requires Internet protocol-compatible customer premises equipment (CPE); and**
- (4) Permits users generally to receive calls that originate on the public switched telephone network **and to terminate calls to the public switched telephone network.**

47 C.F.R. § 9.3 (emphasis added).

Millicorp/ConsCallHome cannot “terminate calls to the public switched telephone network.” *Id.* It cannot originate traffic of any kind. The Declaration of Curtis L. Hopfinger, Director – Regulatory and Government Affairs, proves this fact and never has been addressed or refuted. Mr. Hopfinger explains that upon seeing the Millicorp/ConsCallHome Comments in which it claimed status as an “interconnected VoIP provider,” he called the customer service number published at www.conscallhome.com. Hopfinger Decl. ¶ 4. He asked the representative how he “could establish residential telephone service from ConsCallHome.” *Id.* The representative responded that “ConsCallHome does not provide residential telephone service.” *Id.* ¶ 5. He stated that “ConsCallHome can only re-route inmate calls[.]” *Id.* The called party “must have existing telephone service for ConsCallHome’s re-routing service to operate.” *Id.* As such, “ConsCallHome cannot originate calls from any end user,” and in fact cannot originate any calls “from any inmate.” *Id.*

As stated above, Millicorp/ConsCallHome admits that its “customers” do not need “IP-compatible [customer premises equipment].” Letter at 2 n.1. Rather, the “customers” must use whatever CPE that their local exchange carrier directs them to use. Millicorp/ConsCallHome is not a LEC and cannot originate telephone calls, or carry any calls other than inmate calls, and thus of course does not provide or have guidelines for CPE. Millicorp/ConsCallHome also admits that a broadband connection is not necessary for receiving diverted inmate calls. *Id.*

Arent Fox

Further, Millicorp/ConsCallHome, according to the description its customer service representative gave to Mr. Hopfinger, provides a call-forwarding /call re-routing service that uses a form of VoIP for the “inter-office transport” only. Hopfinger Decl. ¶ 5. Millicorp/ConsCallHome does not provide the originating or terminating facilities, or the CPE, for any of the calls that it re-routes.

Millicorp/ConsCallHome fails three of the Commission’s four criteria defining “interconnected VoIP service.” For it to persist in representing itself as an “interconnected VoIP provider” is therefore improper.

3. Securus Is Not Blocking Calls To Vonage End Users.

Millicorp/ConsCallHome makes the unfounded allegation that Securus is “blocking calls to Millicorp, Vonage and at least one cellphone provider.” Letter at 2. This allegation is false, as is Millicorp/ConsCallHome’s persistent attempts to liken itself to legitimate interconnected VoIP providers such as Vonage.

It is also telling that Millicorp/ConsCallHome previously has alleged to the Commission that Securus “may be discriminating against Millicorp by blocking Millicorp and not other similarly situated interconnected VoIP providers, such as Vonage.” Comments of Millicorp at 14 (Aug. 28, 2009). Millicorp/ConsCallHome may be attempting to elicit a response from Securus that, it believes, will reveal some kind of unlawful discrimination that Millicorp/ConsCallHome can use to support other claims. That attempt would fail, however, because Securus is not discriminating unlawfully against Millicorp/ConsCallHome or any other operator of a call diversion scheme.

Securus does not block inmate calls placed to Vonage end users, because, unlike calls re-routed by call diversion schemes, those calls do not pose security risks. Although Vonage assigns an end user any terminating phone number they wish, and that phone number may have the same NPA as an inmate who will call that end user, the numbers Vonage assigns are registered to that end user. The number will be registered in LIDB with the end user’s physical address. The number is the same one from which the end user originates calls and, perhaps more importantly, the number is the published number to which other calls to that end user terminate. As such, the call detail record (“CDR”) generated by an inmate call to a Vonage end user will include an actual terminating number that has a registered physical address. If a law enforcement official reviewed that CDR to find the location of an inmate’s called party, the CDR would provide him with usable information. In a word, the call would be, to use the verbiage in the Securus Petition, “traceable.” See Securus Petition at 8. Law enforcement officials thus have no need to block calls to Vonage end users.

Arent Fox

Millicorp/ConsCallHome cannot establish that Securus has committed any wrongdoing by harkening to Vonage. It is not, as proven in the Securus Reply and herein, an interconnected VoIP provider like Vonage. Moreover, Vonage does not present the security risks that Millicorp/ConsCallHome and other call diversion schemes present. Millicorp/ConsCallHome's talismanic use of "Vonage" is therefore unavailing and does nothing to excuse its conduct.

4. Millicorp/ConsCallHome Presents a Grave Security Risk.

Millicorp/ConsCallHome purports that its "VoIP service does not present a security risk to prisons or jails." Letter at 1-2. This assertion, as it pertains to call diversion schemes like ConsCallHome, is also false.

As an initial matter, Securus has already proved that Millicorp/ConsCallHome does not provide "interconnected VoIP service." Securus Reply at 7-8; Hopfinger Decl. ¶¶ 4-5; *see also infra* item (2). Thus, the assertion begins from a false premise, that Millicorp/ConsCallHome provides simply "VoIP service," and thus necessary is false.

The "service" that Millicorp/ConsCallHome does provide imposes a grave security threat. As Securus has explained, the "local" numbers that Millicorp/ConsCallHome and other operators of call diversion schemes give their "customers" are not registered to any end user. Securus Petition at 7-8, 14; Pickens Decl. ¶ 9; Securus Reply at 14-15. The LIDB does not contain any address for the end user. Yet the CDR of the inmate's call lists only the false "local" number that the inmate dialed; if a law enforcement official were to research CDRs for an inmate who uses a call diversion scheme, the geographic location of the called party would not be found. Securus Petition at 14-15; Securus Reply at 15-16. This information is often crucial to investigations, particularly in the event of an escape. Securus Petition at 14-15 (discussing escape of Jesse James Caston in Louisiana).

Securus also addressed the assertion of Millicorp/ConsCallHome that Securus's billing records contain the geographic address of called parties who receive calls via call diversion schemes. Letter at 2; *see also* Securus Reply at 15-16. These billing records are not reliable for law enforcement investigations, for a few reasons. First, Securus does not know who is using call diversion schemes. Contrary to Millicorp/ConsCallHome's belief, persons who set up prepaid accounts are not asked whether they use Millicorp/ConsCallHome. The typical scenario is that the person establishes a pre-paid collect account with the "local" number assigned by Millicorp/ConsCallHome. Most of these pre-paid accounts are established using an Interactive Voice Response (IVR) system that does not query the customer as to the physical address of the telephone number and will only require enough information to validate the credit card being used. Even if a live customer service representative sets up the account, that representative does not attempt to research LIDB as to whether the NPA of the "local" number is associated with the called party's physical address. Secondly, if the inmate has his or her own prepaid account (a

Arent Fox

calling card or debit account), which is a service that Securus has made available where feasible, then the inmate is responsible for funding the account. The billing address of the called party is never requested at all. Third, it is common for the billing address of a prepaid account to be different from the geographic location of the terminating phone number. Often a relative establishes the account on behalf of the person who will receive inmate calls. Securus Reply at 15. This practice is appropriate so long as the terminating phone number on the account has a registered physical address which, in Securus's experience, is always the case. Not until call diversion schemes began re-routing its traffic did Securus have any difficulty supplying law enforcement officials with accurate and usable CDRs.

For all these reasons, Millicorp/ConsCallHome is wrong to assert that Securus's internal billing records are, or should be expected to be, as accurate as the LIDB for purposes of investigating inmate calls. *Id.* Nor is it appropriate for an uninvited third party to tell law enforcement that it must use two different sources — the LIDB and the billing records of the inmate service provider holding the service contract — to investigate inmate calls. Securus Reply at 16. Yet that is exactly what Millicorp/ConsCallHome is telling law enforcement — via submissions here rather than directly — to do.

Finally, the fact that Millicorp/ConsCallHome and other call diversion schemes are used expressly to circumvent security features is a matter of record in this proceeding. The Securus Petition noted that Portal32.com expressly advertises that its "service" enables inmates to call blocked numbers. Securus Petition at 8. The Portal32.com website states "Inmate Calls Get Though Collect Call Blocked Numbers." Securus Petition Exhibit 2. In addition, the Securus Reply relates that a woman is in federal custody for operating a call diversion scheme from the Nassau County Correctional Facility in New York. Securus Reply at 21 & Exhibit 30. She charged \$195 per month for the scheme. Plainly the inmates' aim was not to save money, but rather to be able to circumvent the security restrictions of the jail. Finally, if, as Millicorp/ConsCallHome asserts, calls are being diverted from jails operated by the Federal Bureau of Prisons (Letter at 3), that fact also would demonstrate that an inherent attraction of using call diversion schemes lies in avoiding security restrictions rather than getting a cheaper phone rate. Inmate calls from federal prisons have lower rates than most correctional facilities, due to factors such as high call volume and the absence of site commissions. *See* CC Docket No. 96-128, Alternative Rulemaking Proposal at 18 (Mar. 1, 2007). Calling rates are likely not the deciding factor when an inmate uses a call diversion scheme from one of these facilities.

Securus has no basis to believe that Millicorp/ConsCallHome or any other call diversion scheme was commenced with an intent to create security risks for inmates and the public. The fact remains, however, that call diversion schemes necessarily present these risks. The Commission should not be assuaged by the efforts of Millicorp/ConsCallHome to belittle the

Arent Fox

concerns of law enforcement in this regard or to assert that Millicorp/ConsCallHome can obviate these risks.

5. Many Correctional Authorities Require That Calls to Cell Phones Be Blocked.

Millicorp/ConsCallHome complains that Securus is blocking calls to “at least one cellphone provider.” Letter at 2. It does not know, however, because it is not the contractor at any correctional site, that some correctional authorities require that calls to cell phones be blocked for security reasons. For example, the Florida Department of Corrections, which operates 143 sites throughout Florida, requires that calls to cell phones be blocked. The reason for the blocking is that cell phones may be prepaid and thus do not have physical addresses associated with them. This requirement has been in place at least since Securus began providing service at these facilities in September 2007. Millicorp/ConsCallHome thus has no basis to assert that calls to wireless phones are being blocked for the same reason that call diversion schemes are blocked.

6. Millicorp/ConsCallHome Misplaces Its Reliance on the Statement by the Deputy Director of the Michigan Department of Corrections.

Millicorp/ConsCallHome relies heavily on a one-page memorandum issued in February 2007 by the Deputy Warden of the Michigan Department of Corrections. Letter at 2. This memorandum, which was referenced in the Citizens United for the Rehabilitation of Errants comments on the Securus Petition, should not be construed as an acceptance or encouragement of call diversion schemes. Securus retrieved the memorandum after reading the CURE comments and appended it to its Reply Comments as Exhibit 31. As Securus explained, the memorandum notes only that “‘friends and families of prisoners are also switching to VoIP in order to save money.’” Securus Reply at 18 (quoting memorandum). The memorandum also acknowledges that these friends and families are “‘obtaining a telephone number with the same area code that the prisoner is located.’” *Id.*

As Securus already has explained, however, the memorandum is telling in what it does not say. For example, the memorandum does not address the following facts which are present in call diversion schemes:

- That the “local” number dialed by the inmate is re-routed to the actual terminating number of the called party
- That the “friends and family” do not use the “local” number to receive or to place any other call.

Arent Fox

- That the “local” number dialed by the inmate is useless in assisting law enforcement to find the location of the called party.

Securus Reply at 18-19.

In addition, it is highly unlikely that the Deputy Director was aware of Millicorp/ConsCallHome when the memorandum was released. *Id.* at 19. According to Millicorp/ConsCallHome, it became operational in early 2008. The memorandum was written almost a year earlier in February 2007. Further, it is unlikely that the Deputy Director was aware of any other call diversion scheme when he issued the memorandum, because Securus records do not indicate that any suspicious call traffic was occurring in Michigan at that time.

For all these reasons, the reliance that Millicorp/ConsCallHome places on the Deputy Director’s memorandum is misplaced. The Commission should not construe the memorandum as an imprimatur on call diversion schemes or on Millicorp/ConsCallHome specifically.

7. It Is Securus, and Not Millicorp/ConsCallHome, That Provides the Blocking of Call Forwarding and Three-Way Calling Attempts.

Millicorp/ConsCallHome purports that it “has deliberately disabled functionality for call forwarding, three-way calling, and multi-phone device ringing for its ConsCallHome service offering.” Letter at 3. Securus does not believe that Millicorp/ConsCallHome could “disable” any functionality that its “customers” — who are LEC subscribers — could use. Millicorp/ConsCallHome has no control over the CPE that these people use or the manner in which they use it. Securus is thus unsure what it is that Millicorp/ConsCallHome has “disabled.”

To the extent that Millicorp/ConsCallHome is asserting that it has installed technology to prevent call forwarding and three-way calls, that assertion is false. Securus, as the exclusive contractor for inmate telecommunications services at approximately 2,300 sites throughout the United States, is the entity that installed this technology. Securus Petition at 1-2. Securus is also the leading licensor of this technology to other providers of inmate telecommunications who likewise are the exclusive contractors at the sites they serve. *Id.*

Securus has developed technology that can, in several different ways, detect an attempt by an inmate or a called party to forward the call or establish a three-way call. Correctional authorities can request that such attempts be handled in different ways. This functionality is universally demanded by correctional authorities, and other service providers that do not use the Securus technology have developed their own. When an inmate uses a call diversion scheme, the technology installed at the correctional facility can still detect a three-way or call forwarding attempt. The installed technology is still “present” on the call — that is the only good news in the call diversion scenario — despite the fact that the call was re-routed. The technology cannot,

Arent Fox

however, detect the re-routing, because it is performed by a VoIP re-router placed somewhere in the public switched telephone network between the correctional facility and the called party. The bad news remains, however, that the system cannot detect the true location or the actual telephone number to which the inmate call terminated.

For Millicorp/ConsCallHome to assert that it has taken steps to prevent improper calling is preposterous. Millicorp/ConsCallHome is simply free-riding on the Securus calling platform that connected the call. Millicorp/ConsCallHome is using the Securus technology to provide its call diversion "service" without any permission from Securus or any of the correctional facilities that Securus serves. It is remarkable that Millicorp/ConsCallHome attempts to claim the Securus technology as its own, and then uses Securus's security features as a means of opposing the Securus Petition. Millicorp/ConsCallHome does nothing to maintain a secure calling platform or to negate the grave security risk that it creates by diverting inmate calls. To the extent any security controls remain in place, Securus is providing them.

*

*

*

*

Having demonstrated herein and in its previous filings that Millicorp/ConsCallHome cannot represent itself as a "legitimate" carrier, much less an authorized provider of inmate telecommunications services, and has no right to divert inmate calls, Securus believes that the Petition should be granted. Please do not hesitate to contact me with any additional questions or concerns: 202.857.6081. Thank you for your consideration.

Sincerely,

s/Stephanie A. Joyce

Counsel for Securus Technologies, Inc.

cc: Chairman Julius Genachowski (*via electronic mail*)
Commissioner Michael Copps (*via electronic mail*)
Commissioner Robert McDowell (*via electronic mail*)
Commissioner Meredith Attwell Baker (*via electronic mail*)
Commissioner Mignon Clyburn (*via electronic mail*)
Sharon Gillett, Chief, Wireline Competition Bureau (*via electronic mail*)
Austin Schlick, General Counsel (*via electronic mail*)
Priya Aiyar, Legal Advisor to Chairman Genachowski (*via electronic mail*)
Jennifer Schneider, Legal Advisor to Commissioner Copps (*via electronic mail*)
Christine Kurth, Legal Advisor to Commissioner McDowell (*via electronic mail*)
Christi Shewman, Legal Advisor to Commissioner Baker (*via electronic mail*)

Arent Fox

Carol Simpson, Legal Advisor to Commissioner Clyburn (*via electronic mail*)
Albert Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Julie Veach, Associate General Counsel (*via electronic mail*)
Diane Griffin Holland, Assistant General Counsel (*via electronic mail*)
Trent Harkrader, Deputy Chief, Investigations and Hearings Division, Enforcement Bureau (*via electronic mail*)
Marcus Maher, Legal Advisor to Chief of the Wireline Competition Bureau (*via electronic mail*)
Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)
Lynne Hewitt Engledow, Pricing Policy Division, Wireline Competition Bureau (*via electronic mail*)